

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 1520**

**Introduced by Assembly Member Niello**

February 22, 2005

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An act to amend ~~Section 21800 of the Vehicle Code, relating to vehicles; Sections 5956, 5956.1, 5956.2, 5956.3, 5956.4, 5956.6, and 5696.9 of, and to repeal Section 5956.10 of, the Government Code, relating to public works.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 1520, as amended, Niello. ~~Vehicles: yield~~ *Public works contracts: infrastructure projects.*

Existing law ~~provides rules of the road governing the yielding of vehicles at intersections.~~

~~This bill would make technical, nonsubstantive changes in that provision.~~ *authorizes local governmental agencies to enter into an agreement with a private entity for the study, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operating, or any combination thereof, by, and lease to or ownership by, that entity of a nonstate, revenue-generating infrastructure project, including, among others, projects for energy or power production, subject to specified criteria.*

*The California Constitution authorizes the state and all other governmental entities, as specified, to contract with qualified private entities for specified services for all public works of improvement.*

*This bill would, subject to that constitutional provision, include the state within the provisions authorizing the agreement with a private entity with respect to a revenue-generating project, and would*

*additionally specify that authorized projects include energy or power production and transmission.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 21800 of the Vehicle Code is amended~~  
2     ~~to read:~~

3     ~~SECTION 1. Section 5956 of the Government Code is~~  
4     ~~amended to read:~~

5     ~~5956. Local~~ *State and local* governmental agencies have  
6     experienced a significant decrease in available tax revenues to  
7     fund necessary infrastructure improvements. If *state and* local  
8     governmental agencies are going to maintain the quality of life  
9     that this infrastructure provides, they must find new funding  
10    sources. One source of new money is private sector investment  
11    capital utilized to design, construct, maintain, rebuild, repair, and  
12    operate infrastructure facilities. Unless private sector investment  
13    capital becomes available to study, plan, design, construct,  
14    develop, finance, maintain, rebuild, improve, repair, or operate,  
15    or any combination thereof, fee-producing infrastructure  
16    facilities, some *state and* local governmental agencies will be  
17    unable to replace deteriorating infrastructure. Further, some *state*  
18    *and* local governmental agencies will be unable to expand and  
19    build new infrastructure facilities to serve the increasing  
20    population.

21    ~~SEC. 2. Section 5956.1 of the Government Code is amended~~  
22    ~~to read:~~

23    ~~5956.1. It is the intent of the Legislature that~~ *state and* local  
24    governmental agencies have the authority and flexibility to  
25    utilize private investment capital to study, plan, design, construct,  
26    develop, finance, maintain, rebuild, improve, repair, or operate,  
27    or any combination thereof, fee-producing infrastructure  
28    facilities. Without the ability to utilize private sector investment  
29    capital to study, plan, design, construct, develop, finance,  
30    maintain, rebuild, improve, repair, or operate, or any combination  
31    thereof, fee-producing infrastructure facilities, the Legislature  
32    finds that some *state and* local governmental agencies will not be  
33    able to adequately, competently, or satisfactorily retrofit,

1 reconstruct, repair, or replace existing infrastructure and will not  
2 be able to adequately, competently, or satisfactorily design and  
3 construct new infrastructure.

4 *SEC. 3. Section 5956.2 of the Government Code is amended*  
5 *to read:*

6 5956.2. (a) It is the intent of the Legislature that this chapter  
7 be construed as creating a new and independent authority for  
8 *state and* local governmental agencies to utilize private sector  
9 investment capital to study, plan, design, construct, develop,  
10 finance, maintain, rebuild, improve, repair, or operate, or any  
11 combination thereof, fee-producing infrastructure facilities. To  
12 that end, this authority is intended to supplement and be  
13 independent of any existing authority and does not limit, replace,  
14 or detract from existing authority. This chapter may be used by  
15 *state and* local governmental entities when they deem it  
16 appropriate in the exercise of their discretion. It is the intent of  
17 the Legislature that this ~~act~~ chapter create no new governmental  
18 entities.

19 (b) *This chapter shall apply to state agencies only to the extent*  
20 *it is consistent with Section 1 of Article XXII of the California*  
21 *Constitution.*

22 *SEC. 4. Section 5956.3 of the Government Code is amended*  
23 *to read:*

24 5956.3. (a) For purposes of this chapter, “governmental  
25 agency” includes *the state*, a city, county, city and county,  
26 including a chartered city or county, school district, community  
27 college district, public district, county board of education, joint  
28 powers authority, transportation commission or authority, or any  
29 other public or municipal corporation.

30 (b) For purposes of this chapter, “private entity” includes a  
31 person, business entity, combination of persons and business  
32 entities, or a combination of business entities.

33 (c) For purposes of this chapter, “fee-producing infrastructure  
34 project” or “fee-producing infrastructure facility” means the  
35 operation of the infrastructure project or facility will be paid for  
36 by the persons or entities benefitted by or utilizing the project or  
37 facility.

38 *SEC. 5. Section 5956.4 of the Government Code is amended*  
39 *to read:*

1 5956.4. A governmental agency may solicit proposals and  
2 enter into agreements with private entities for the design,  
3 construction, or reconstruction by, and may lease to, private  
4 entities for the following types of fee-producing infrastructure  
5 projects:

- 6 (a) Irrigation.
- 7 (b) Drainage.
- 8 (c) Energy or power production *and transmission*.
- 9 (d) Water supply, treatment, and distribution.
- 10 (e) Flood control.
- 11 (f) Inland waterways.
- 12 (g) Harbors.
- 13 (h) Municipal improvements.
- 14 (i) Commuter and light rail.
- 15 (j) Highways or bridges.
- 16 (k) Tunnels.
- 17 (l) Airports and runways.
- 18 (m) Purification of water.
- 19 (n) Sewage treatment, disposal, and water recycling.
- 20 (o) Refuse disposal.
- 21 (p) Structures or buildings, except structures or buildings that  
22 are to be utilized primarily for sporting or entertainment events.

23 *SEC. 6. Section 5956.6 of the Government Code is amended*  
24 *to read:*

25 5956.6. (a) For purposes of facilitating projects, the  
26 agreements specified in Section 5956.4 may include provisions  
27 for the lease of rights-of-way in, and airspace over, property  
28 owned by a governmental agency, for the granting of necessary  
29 easements, and for the issuance of permits or other authorizations  
30 to enable the private entity to construct infrastructure facilities  
31 supplemental to existing government-owned facilities.  
32 Infrastructure constructed by a private entity pursuant to this  
33 chapter shall, at all times, be owned by a governmental agency,  
34 unless the governmental agency, in its discretion, elects to  
35 provide for ownership of the facility by the private entity during  
36 the term of the agreement. The agreement shall provide for the  
37 lease of those facilities to, or ownership by, the private entity for  
38 up to 35 years. In consideration therefor, the agreement shall  
39 provide for complete reversion of the privately constructed  
40 facility to the governmental agency at the expiration of the lease

1 at no charge to the governmental agency. Subsequent to the  
2 expiration of the lease or ownership period, the governmental  
3 agency may continue to charge fees for use of the infrastructure  
4 facility. If, after the expiration of the lease or ownership period,  
5 the governmental agency continues to lease airspace rights to the  
6 private entity, it shall do so at fair market value.

7 (b) The agreement between the governmental agency and the  
8 private entity shall include, but need not be limited to, provisions  
9 to ensure the following:

10 (1) Compliance with the California Environmental Quality Act  
11 (Division 13 (commencing with Section 21000) of the Public  
12 Resources Code). Neither the act of selecting a proposed project  
13 or a private entity, nor the execution of an agreement with a  
14 private entity, shall require prior compliance with the act.  
15 However, appropriate compliance with the act shall thereafter  
16 occur before project development commences.

17 (2) Security for the construction of the facility to ensure its  
18 completion, and contractual provisions that are necessary to  
19 protect the revenue streams of the project.

20 (3) Adequate financial resources of the private entity to  
21 design, build, and operate the facility, after the date of the  
22 agreement.

23 (4) Authority for the governmental agency to impose user fees  
24 for use of the facility in an amount sufficient to protect the  
25 revenue streams necessary for projects or facilities undertaken  
26 pursuant to this chapter. User fee revenues shall be dedicated  
27 exclusively to payment of the private entity's direct and indirect  
28 capital outlay costs for the project, direct and indirect costs  
29 associated with operations, direct and indirect user fee collection  
30 costs, direct and indirect costs of administration of the facility,  
31 reimbursement for the direct and indirect costs of maintenance,  
32 and a negotiated reasonable return on investment to the private  
33 entity.

34 (5) As a precondition to the imposition or increase of a user  
35 fee, the governmental agency shall conduct at least one public  
36 hearing at which public testimony will be received regarding a  
37 proposed user fee revenue or increase in user fee revenues. The  
38 public hearing shall precede the action by the governmental  
39 agency to actually impose a user fee or to increase an existing  
40 user fee. The governmental agency shall consider the public

1 testimony prior to imposing a new or increased user fee. The  
2 governmental agency shall provide the following notices and  
3 utilize the following procedures:

4 (A) Notice of the date, time, and place of the meeting,  
5 including a general explanation of the matter to be considered,  
6 shall be mailed at least 14 days prior to the meeting to any  
7 interested party who files a written request with the governmental  
8 agency for mailed notice of the meeting on new or increased fees  
9 or service charges. Any written request for mailed notices shall  
10 be valid for one year from the date on which it is filed unless a  
11 renewal request is filed prior to the expiration of the one-year  
12 period for which the written request was filed. The legislative  
13 body may establish a reasonable annual charge for sending  
14 notices based on the estimated cost of providing the service.

15 (B) At least 10 days prior to the meeting, the governmental  
16 agency shall make available to the public data that supports the  
17 amount of the fee or the increase in the fee.

18 (C) (i) At least 10 days prior to the meeting, the governmental  
19 agency shall publish a notice in a newspaper of general  
20 circulation in that agency's jurisdiction stating the date, time, and  
21 place of the meeting, including a general explanation of the  
22 matter to be considered.

23 (ii) Any costs incurred by the governmental agency in  
24 conducting the meeting or meetings required by this section may  
25 be recovered from fees charged for the services that are the  
26 subject of the fee.

27 (iii) For transportation projects specifically authorized by this  
28 chapter, at least 10 days prior to the meeting, the governmental  
29 agency shall publish for four consecutive times, a notice in the  
30 newspaper of general circulation in the affected area stating in no  
31 smaller than 10-point type a notice specifying the subject of the  
32 hearing, the date, time, and place of the meeting, and in at least  
33 8-point type a general explanation of the matter to be considered.

34 (D) No *state or* local agency shall levy a new fee or service  
35 charge or increase an existing fee or service charge to an amount  
36 that exceeds the estimated amount required to provide the service  
37 for which the fee or service charge is levied and a reasonable rate  
38 of return on investment, pursuant to paragraph (4). Any action by  
39 a *state or* local agency to levy a new fee or service charge or to  
40 approve an increase in an existing fee or service charge pursuant

1 to this chapter shall be taken only by ordinance or resolution. The  
2 legislative body of a local agency shall not delegate the authority  
3 to adopt a new fee or service charge, or to increase a fee or  
4 service charge.

5 (6) Require that if the legislative body of the governmental  
6 agency determines that fees or service charges create revenues in  
7 excess of the actual cost for which the user fee revenues are  
8 dedicated and a reasonable rate of return on investment, pursuant  
9 to paragraph (4), those revenues shall either be applied to any  
10 indebtedness incurred by the private entity with respect to the  
11 project, be paid into a reserve account in order to offset future  
12 operation costs, be paid into the appropriate government account,  
13 be used to reduce the user fee or service charge creating the  
14 excess, or a combination of these sources.

15 (7) Require the private entity to maintain the facility in good  
16 operating condition at all times, including the time the facility  
17 reverts to the governmental agency.

18 (8) Preparation by the private entity of an annual audited  
19 report accounting for the income received and expenses to  
20 operate the facility. The private entity shall make that report  
21 available to any member of the public for a cost not to exceed the  
22 cost of reproduction of the report.

23 (9) Provision for a buyout of the private entity by the  
24 governmental entity in the event of termination or default before  
25 the end of the lease term.

26 (10) Provision for appropriate indemnity promises between the  
27 governmental agency and the private entity.

28 (11) Provision requiring the private entity to maintain  
29 insurance with those coverages and in those amounts that the  
30 governmental agency deems appropriate.

31 (12) In the event of a dispute between the governmental  
32 agency and the private entity, both parties shall be entitled to all  
33 available legal or equitable remedies.

34 *SEC. 7. Section 5956.9 of the Government Code is amended*  
35 *to read:*

36 5956.9. In order to use the authority conferred by this chapter  
37 to the maximum extent, a governmental agency may use private  
38 infrastructure financing pursuant to this chapter as the exclusive  
39 revenue source or as a supplemental revenue source with federal,  
40 *state*, or local funds. The governmental agency involved may be

1 a *state agency*, a local governmental agency or a combination of  
2 local governmental agencies. The governmental agency may  
3 work cooperatively with the *board of directors of the California*  
4 *Infrastructure and Economic Development Board Bank* with  
5 regard to the design, construction, operation, and financing of  
6 privately financed facilities, but the projects ~~will~~ *shall* not be  
7 subject to the review or approval of that board.

8 *SEC. 8. Section 5956.10 of the Government Code is repealed.*

9 ~~5956.10. Notwithstanding any provision of this chapter,~~  
10 ~~neither the state or any state agency may directly or indirectly use~~  
11 ~~the authority in this chapter, nor may any governmental agency~~  
12 ~~as defined in Section 5956.3, use the authority in this chapter, to~~  
13 ~~design, construct, finance, or operate a state project. For purposes~~  
14 ~~of this section, a state project includes any of the following:~~

- 15 ~~(a) Toll roads on state highways.~~
- 16 ~~(b) State water projects.~~
- 17 ~~(c) State park and recreation projects.~~
- 18 ~~(d) State financed projects.~~

19 ~~These limitations shall not prohibit the state, any state agency,~~  
20 ~~or any governmental agency as defined in Section 5956.3, from~~  
21 ~~utilizing authorizations contained in other provisions of law.~~

22 ~~21800. (a) The driver of a vehicle approaching an~~  
23 ~~intersection shall yield the right-of-way to a vehicle that has~~  
24 ~~entered the intersection from a different highway.~~

25 ~~(b) (1) When two vehicles enter an intersection from different~~  
26 ~~highways at the same time, the driver of the vehicle on the left~~  
27 ~~shall yield the right-of-way to the vehicle on his or her immediate~~  
28 ~~right, except that the driver of a vehicle on a terminating highway~~  
29 ~~shall yield the right-of-way to a vehicle on the intersecting~~  
30 ~~continuing highway.~~

31 ~~(2) For the purposes of this section, "terminating highway"~~  
32 ~~means a highway that intersects, but does not continue beyond~~  
33 ~~the intersection, with another highway that does continue beyond~~  
34 ~~the intersection.~~

35 ~~(c) When two vehicles enter an intersection from different~~  
36 ~~highways at the same time and the intersection is controlled from~~  
37 ~~all directions by stop signs, the driver of the vehicle on the left~~  
38 ~~shall yield the right-of-way to the vehicle on his or her immediate~~  
39 ~~right.~~



1     ~~(d) (1) The driver of a vehicle approaching an intersection~~  
2     ~~that has official traffic control signals that are inoperative shall~~  
3     ~~stop at the intersection, and may proceed with caution when it is~~  
4     ~~safe to do so. This paragraph applies to traffic control signals that~~  
5     ~~become inoperative because of battery failure.~~

6     ~~(2) When two vehicles enter an intersection from different~~  
7     ~~highways at the same time, and the official traffic control signals~~  
8     ~~for the intersection are inoperative, the driver of the vehicle on~~  
9     ~~the left shall yield the right-of-way to the vehicle on his or her~~  
10    ~~immediate right, except that the driver of a vehicle on a~~  
11    ~~terminating highway shall yield the right-of-way to any vehicle~~  
12    ~~on the intersecting continuing highway.~~

13    ~~(e) This section does not apply to the following:~~

14    ~~(1) An intersection controlled by an official traffic control~~  
15    ~~signal or yield right-of-way sign.~~

16    ~~(2) An intersection controlled by stop signs from less than all~~  
17    ~~directions.~~

18    ~~(3) When vehicles are approaching each other from opposite~~  
19    ~~directions and the driver of one of the vehicles intends to make,~~  
20    ~~or is making, a left turn.~~